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August 7, 2006

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Office of Energy Efficiency and Renewable Energy,
Freedom CARB and Vehicle Technologies Program,
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Re: RIN 1094-AB66

Southern California Edison is pleased to submit written comments on the Notice of Proposed Rulemaking on the Alternative Compliance (or "Waiver") program required by Section 514 of the Energy Policy Act of 1992 ("EPAct"), as added by Section 703 of the Energy Policy Act of 2005.

We support the Waiver program and believe it brings important flexibility to EPAct. We appreciate the Department of Energy's flexibility and openness to making this program workable for fleets while attaining the petroleum displacement, technology advancement and environmental benefits of the EPAct alternative fuel vehicle program.

Our detailed comments are attached. We look forward to working with you further as this important program is moved forward.

Sincerely,

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BEFORE THE
UNITED STATES DEPARTMENT OF ENERGY
WASHINGTON, D.C.

10 C.F.R. Part 490 RIN 1904-AB66
Alternative Fuel Transportation Program
Alternative Compliance
Notice of Proposed Rulemaking

COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY

These comments on the Department of Energy's ("DOE" or "Department") Notice of Proposed Rulemaking ("NOPR") *Alternative Fuel Transportation Program: Alternative Compliance,* Federal Register, Vol. 71, No. 121 (June 23, 2006) are on behalf of Southern California Edison ("SCE").

Since 1996, SCE has been a national leader in support of and compliance with the 1992 Energy Policy Act's ("EPAct") alternative fuel vehicle fleet requirements programs. We were one of the first utilities in the country to declare our compliance strategy (electric vehicles or "EVs") and have consistently led the nation in deployment, operation and demonstration of advanced alternative fuel technology.

On June 23, 2006 DOE issued a Notice of Proposed Rulemaking to allow a new type of EPAct compliance flexibility for "covered" fleets. SCE's Electric Transportation Department ("ET") has been the lead on EPAct fleet compliance strategy since 1996, and has worked collaboratively with other SCE departments in complying with this important law. The new alternative compliance waiver ("Waiver program") was required by Section 703 of the Energy Policy Act of 2005. Section 703 reflects the recognition by Congress that in addition to encouraging alternative fuel vehicle technology, covered fleet operators can make an important contribution in reducing consumption of petroleum fuels. SCE and others have long called for the introduction of additional compliance flexibility into the EPAct programs in order to enable the goals of the programs to be met in the most effective way possible.

SCE supports the overall goals and objectives of the proposed regulations to allow a state or covered fleet to submit a waiver application to DOE in lieu of complying with sections 501 or 507(o) of EPAct 92. SCE believes that the intent of the waiver provisions now contained in section 514(a) of EPAct was to provide states and covered fleets greater flexibility to meet their EPAct requirements, while at the same time achieving equal to or greater than the petroleum reduction that would result from 100% compliance with alternative fuel vehicles. In this way, the EPAct programs will help to address this nation's growing energy challenges.

Of particular importance, this alternative compliance program provides a mechanism to incorporate the introduction of hybrid electric vehicles ("HEVs", including plug-in hybrids ("PHEVs"), into the EPAct programs. In this way, the Waiver program can continue the valuable "technology push" that has always been at the heart of Federal alternative fuel vehicle programs.

SCE appreciates the efforts that the DOE and the staff of the Office of FreedomCar and Vehicle Technologies have made to develop a proposed rule in a timely manner and for their willingness to work with fleets. Rulemaking we believe is a particularly appropriate means to provide a blueprint to regulated entities that will enable them to understand and take advantage of the alternative compliance waiver option.

We are especially pleased and supportive of certain clarifications that emerged during the public workshop, which we have summarized below:

- DOE is open to inclusion of non-road vehicles in Waiver program applications, as long as certain requirements and caveats are met (discussed further, below).
- DOE staff's goals include improving the Waiver program over time through the use of standardization. As an initial step, DOE will provide links to standardized data from government websites.
- Waiver applicants can use this type of standardized data to determine fuel economy ratings for planned light duty vehicle ("LDV") purchases (e.g., using 55 mpg from www.fueleconomy.gov for a Toyota Prius HEV, as in Ms. Bluestein's example on "Option C" slide as presented at the July 12 public workshop).
- DOE recognizes that not all fleets currently track or isolate petroleum usage for their LDVs. Therefore, DOE will be flexible as to the methodology individual fleets employ to make this initial estimate.
- DOE acknowledges that fleets may not have all necessary information by March 31 of the waiver year to file a complete application. DOE is open to a system where fleets could submit a "pre-plan" by March 31, followed by a firm plan on or before July 15. DOE would then approve the plan within 45 days. DOE understands that this approach will help in the capital planning process that many utilities must go through.

SCE's supports the approaches reflected in the proposed regulations regarding the extent of petroleum displacement that is required under the waiver program, and the opportunity for fleets to rollover excess compliance into a future year. In addition, SCE recommends specific changes in several areas that we believe would increase the value of the Waiver program for fleets while at the same time assuring that the underlying objectives of EPAct in terms of reducing petroleum use, spurring advanced technology and reducing emissions are met. Our specific comments are as follows:

1. <u>"Cumulative" Petroleum Displacement.</u> We support DOE's interpretation of the term "cumulative" in sections 490.802(a) and section 490.803(d)(1)(iii) of the proposed regulations. SCE believes that the final Waiver program rule must

achieve the same or greater petroleum reductions as the existing alternative fuel vehicle ("AFV") acquisition program. It is our opinion that the language in the proposed rule correctly interprets the intent of section 703 and should result in equal to or greater petroleum reductions than are occurring under the existing fuel providers and state fleet acquisition programs.

As the Department correctly has proposed, "cumulative" essentially means lifetime petroleum reductions from each new light-duty AFV that the fleet would have had to purchase under the original EPAct programs.

2. <u>Rollover Provision.</u> We support DOE's proposal for rollover of excess petroleum reduction to future years contained in section 490.806. SCE believes that this provision in the proposed rule adds greater flexibility to the program and will result in greater petroleum reductions over time.

3 <u>Credit Use.</u> We have suggestions on the use of AFV credits in the alternative compliance program. We support the proposal in section 490.805(a) to allow the use of some alternative fuel vehicle credits to meet the Waiver program's petroleum reduction requirement. This approach has two benefits: added flexibility and a continued emphasis on the AFV aspects of the program. We would recommend that DOE state more clearly that unmet requirements under the Waiver program can be met by credits generated under subpart F. To achieve this clarity we would recommend that DOE delete the following language in section 490.805(a)(1): "and demonstrate that it did everything under its control to meet its petroleum reduction requirement." We think this language is overly restrictive and impossible to demonstrate. This change would allow purchase of a limited number of credits to meet any possible shortfall under the Waiver program. For example, if a fleet had a shortfall of 20 or 30 percent of its compliance obligation in a year, we believe the use of credits to eliminate this shortfall should be allowable. We respectfully request clarification in the final rule and any subsequent guidance that this type of flexibility is allowed.

4. <u>Detail Level on Baseline Use of Petroleum</u>. In section 490.803(c) DOE is asking for a level of detail in the waiver application from fleets that will be difficult, if not impossible, to provide. In particular, we are concerned that it may be difficult for a fleet to provide verifiable data on its overall light-duty vehicle petroleum and diesel use. Not all fleets have sophisticated fuel use tracking systems and often central fuel tanks are used by varying numbers of vehicle and vehicle types (light-duty, medium-duty, heavy-duty) to refuel, thus making it difficult to provide verifiable fuel use by each vehicle type.

We would also encourage DOE to provide more options under this section. Our preference for electric and natural gas utilities is a standardized calculator as suggested in the written comments by the California Electric Transportation Coalition (CalETC). This calculator is based on the average light duty vehicle gasoline use over a 4.9 year lifetime of 2650 gallons. SCE respectfully suggests using this number as a placeholder, until more refined numbers are developed by DOE and utilities working in conjunction. Such an approach would greatly improve the feasibility of the Waiver program for many utilities including SCE.

If this is not acceptable, we respectfully suggest a method that does not require a fleet operator to know the mileage or fuel use of every vehicle. For example, a small sample from each type of vehicle in our fleet could allow us – at least initially - to estimate the entire fleet. So rather than having annual mileage (odometer) readings on all 5000 + vehicles in our fleet or fuel use meters on all these vehicle, a sampling approach could reasonably estimate the same thing with only 100 or 200 vehicles.

5. Including Non-Road Vehicles. At the DOE workshop on the NOPR, DOE staff indicated they were receptive to allowing forklifts to be included as a compliance mechanism under the final rule. SCE strongly believes that the final rule should permit fleets to include non-road vehicles such as fleet forklifts in their petroleum reduction plans under section 490.803(d). The intent of the waiver program is to allow flexibility in the means used by fleets to achieve the objective of EPAct to reduce petroleum use. By allowing non-road vehicles such as forklifts to qualify under the waiver program, DOE will further the twin goals of flexibility in the program and petroleum displacement that motivated Congress to include section 703 in the Energy Policy Act of 2005. Fleets will be encouraged to obtain quantifiable and real petroleum reductions by converting gasoline and diesel forklifts and other non-road vehicles to alternative fueled non-road vehicles.

In promulgating the regulations for the fuel provider and state fleet programs in 1996, DOE made the policy decision to allow medium and heavy duty vehicles to generate credits toward compliance. The basis for that determination is equally applicable to nonroad vehicles here. DOE found that medium and heavy duty vehicles could "take advantage of the anticipated fueling infrastructure" for alternative fuels. 61 *Fed. Reg.* 10644. In addition, DOE recognized that such vehicles have the potential to result in "increased displacement of petroleum-based fuel and greater energy security." *Id.* Those attributes also apply to the replacement of petroleum fueled non-road vehicles with alternatively fueled non-road vehicles. DOE similarly should assure that those benefits are captured in the waiver program by expressly providing for the eligibility of alternatively fueled forklifts.

SCE recommends that DOE's proposed regulatory language be changed to make it clear that non-road vehicles may be included in a covered person's petroleum reduction plan by modifying section 490.803(d)(1)(ii) to provide that plans must "Involve a reduction in petroleum use by motor vehicles and non-road fleet vehicles owned, operated, leased or otherwise controlled by the State or covered person." (Language to be added is underscored.) Further, section 490.803(d)(2) should be amended to include alternatively fueled non-road fleet vehicles SCE recommends the addition of the following language: "For purposes of this section, petroleum reductions attributable to non-road fleet vehicles that use an alternative fuel as defined in section 490.2 and are refueled using some or all of the infrastructure used to provide fuel to a State or covered person's fleet may be included in a petroleum reduction plan." We would further recommend that to the extent that the Department retains the requirement that only petroleum reductions that are "transportation-related" may be include in the plan, the Department should clarify that non-road fleet vehicles are "transportation-related."

SCE notes that the refueling infrastructure for non-road vehicles will be similar to that for motor vehicles, but may vary because the specifications for chargers or fuel dispensers may differ. For example, electric forklifts would use much of the same refueling infrastructure (e.g. transformer, wiring, panel upgrades, trenching, etc) that battery EVs and plug-in HEVs would use at the same fleet location. In addition the voltage and kilowatts of most electric forklifts is the same as that for full size batteries and larger size plug-in HEVs, i.e., 240 Vs and 6 kW. To achieve the petroleum reduction benefits of the use of alternatively fueled fork lifts, DOE should not be overly prescriptive regarding the specific infrastructure that must be used.

The inclusion of non-road vehicles as recommended here would be an appropriate exercise of DOE's plenary rulemaking authority. DOE is vested with the administration of the alternative fuel programs established pursuant to Title V of EPAct 1992. The DOE Organization Act authorizes DOE to prescribe rules that are necessary and appropriate to administer and manage these programs. *See* 42 U.S.C. § 7254. SCE submits that rules which permit the inclusion of alternatively fueled non-road vehicles in petroleum reduction plans would serve the purposes of the Act.

In summary, forklifts and similar non-road equipment are housed in most utility's transportation services or fleet services departments. Since these non-road vehicles can account for significant petroleum use and emissions, we recommend DOE make changes that clarify section 490.803 to allow for the inclusion of non-road vehicles in petroleum reduction plans.

6. Standardization. DOE has indicated that it is open to standardization of data. SCE is fully supportive of DOE efforts to make the program flexible and allow for standardization of data and inputs. SCE recommends that DOE include in its final rule guidance document a clear statement on standardization and how DOE will implement standardization. DOE clearly recognized that greater level of standardization could assist both in the administrative feasibility of the program and in assuring uniform compliance.

While DOE has tried to make the rule flexible by allowing a case-by-case approach, SCE is concerned this may cause confusion and possibly lead to compliance inequity around the country. By including standardization in its final guidance on the rule, DOE would make it easier for fleets to prepare and submit a waiver application and make it easier for DOE to review a fleet's application. We support DOE's willingness to standardize where possible and urge that DOE will be willing to accept in final applications credible national utility fleet data, USEPA data and other sources to develop a more standardized data base. We strongly support using these ideas in the guidance report, and, if appropriate, in the final rulemaking too.

7. Light Duty Vehicle Technology Forcing. Besides the petroleum reduction objectives of EPAct, there are other policy goals that the waiver program should further. SCE recommends that DOE give careful consideration to the need to continue to focus on measures that reduce petroleum consumption by light duty fleet vehicles; the need to reduce vehicle fleet emissions; and the important role of fleet vehicle programs in providing markets for the introduction of advanced technology.

   Waiver program requirements should not reduce incentives for fleets to be early-adopters and demonstrators of promising fuel-efficient, light-duty vehicle technologies, such as hybrids and plug-in hybrids. Because DOE is using its plenary rulemaking authority, creative solutions should be possible and appropriate so that light-duty vehicles are not disadvantaged in this rulemaking compared to other options.

   In support of our recommendation we have identified many areas where DOE is directed to look at more than petroleum reduction.

   A. As the DOE Guidebook on the DOE's Alternative Fuel Transportation Program recognizes, EPAct 1992 "called on [DOE] to expand research and development in the transportation sector, and to create programs for accelerating the introduction of alternative fueled vehicles (AFVs) to replace conventional models fueled by gasoline." *See* EPAct Guidebook at 1.

   B. The preamble to the 1996 Alternative Fuel Transportation Program Final Rule identified two interdependent elements necessary to achieve the petroleum displacement goals of the Act. To enable the Act's displacement goals to be met, alternative fuels must be readily accessible and motor vehicles that operate on these alternative fuels must be available for purchase. Thus, two important elements of reducing petroleum motor fuel consumption are: a nationwide alternative fuels infrastructure and the availability of alternative fueled vehicles for purchase at a reasonable cost by the general public in a wide variety of vehicle types and fueling options. 61 *Fed. Reg.* 10623.

   C. This emphasis on the introduction of new technology also is seen in the provisions of Section 501(c) of EPAct 1992, which allowed a delay in compliance for electric utilities in order to provide additional time for commercial electric vehicle technologies to mature.

   D. In addition to this "technology forcing" aspect, EPAct 1992 also established goals for the introduction of domestic replacement fuels intended to not only increase U.S. energy security but also to secure economic and environmental benefits. The replacement fuel supply and demand program established in Section 502 of EPAct 1992 had as its express goal ensuring the availability of the replacement fuels that will "have the greatest impact in reducing oil imports, improving the health of our nation's economy, and reducing greenhouse gas emissions." Moreover, the definition of "alternative fuels" and "replacement fuels" in section 301 of EPAct 1992 expressly refer to fuels that offer both energy security and environmental benefits.

SCE believes that the alternative compliance option enacted through the 2005 Energy Policy Act also should be implemented by the Department in a manner that will address these environmental, technology and economic policies that underlie the EPAct 1992 programs. A colloquy during the Senate's consideration of the conference report on the 2005 energy bill between Senator Domenici, the Chairman of the Senate Energy Committee and the primary author of energy legislation in the Senate, and Senator Dorgan, a leading member of the Senate Energy Committee, clarifies the technology focus of the alternative compliance Waiver program. Senator Dorgan expressed his understanding that "by creating an alternative compliance mechanism that essentially we are creating a system that will allow more technologies to receive credit under the EPAct program without specifically naming them." Chairman Domenici confirmed that Senator Dorgan was correct Senator Dorgan continued that "for instance, neighborhood electric vehicles or low speed electric vehicles would now qualify under this program even though they are not specifically named?" Chairman Domenici again confirmed that Senator Dorgan's understanding was correct. *See* 151 *Cong. Rec.* S 9359 (July 29, 2005).

SCE appreciates the opportunity to provide these comments. For further information about these comments, please do not hesitate to contact Mr. Bill West at (626) 302-9534.